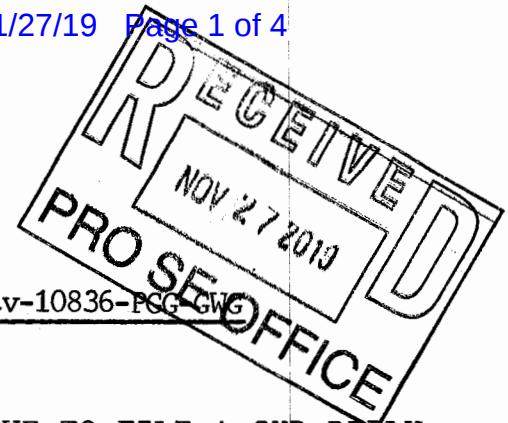


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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|---|
| Martin S. Gottesfeld, pro se,<br>Plaintiff<br>- against -<br>Hugh J. Hurwitz, et al.,<br>Defendants |
|---|

Case No.: 18-cv-10836-PGG-CW

MOTION FOR SUFFICIENT TIME TO FILE FOR LEAVE TO FILE A SUR-REPLY  
REGARDING DEFENDANTS' MOTION TO DISMISS (D.E. 51)

Plaintiff Martin S. Gottesfeld (herein "plaintiff"), acting pro se, hereby moves The Honorable Court to grant him sufficient time following the defendants' reply to his opposition to the defendants' motion to dismiss (D.E. 51) in order for him to file for leave to file a sur-reply. In support of this motion the plaintiff herewith provides and requests that the Court take judicial notice pursuant to Fed. R. Evid. 201(c)(2) of Exhibit 1, Declaration of Martin S. Gottesfeld.

The plaintiff similarly moves the Court to grant him sufficient time following any other motions, oppositions, replies, or other filings that the defendants may file after the plaintiff's opposition to the defendants' previously-filed motion to dismiss (D.E. 51), for example, any opposition the defendants may file to the instant motion for sufficient time for leave to file a sur-reply, or any opposition the defendants file to the plaintiff's claim for mandatory judicial notice pursuant to Fed. R. Evid. 201(c)(2), in order to ensure that the plaintiff is able to answer before The Court rules.

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC#: 11-27-19  
DATE FILED: 11-27-19

Respectfully mailed and filed pursuant to the prison-mailbox rule of Houston v. Lack, 487 U.S. 266 (1988) on Monday, November 18th, 2019, in an envelope bearing sufficient affixed pre-paid U.S. Priority Mail® postage and U.S. Postal Service tracking number 9114 9023 0722 4291 7452 31, handed at the next opportunity to Ms. J. Wheeler of the FCI Terre Haute CMU unit team, acting in her official capacity as an agent of the defendants,

by 

Martin S. Gottesfeld, pro se  
Reg. No.: 12982-104  
Federal Correctional Institution  
P.O. Box 33  
Terre Haute, IN 47808

CERTIFICATE OF SERVICE

I, Martin S. Gottesfeld, pro se, certify that on Monday, November 18th, 2019, I mailed a copy of the foregoing document to counsel for the defendants in the above-captioned case by handing said copy in an envelope bearing sufficient affixed pre-paid first-class U.S. postage to Ms. J. Wheeler of the FCI Terre Haute CMU unit team for mailing in her official capacity as an agent of the defendants,

by 

Martin S. Gottesfeld, pro se

Houston v. Lack, 487 U.S. 266 (1988)

Declaration of Martin S. Gottesfeld:

I, Martin S. Gottesfeld, do hereby affirm that the following is true and accurate to the best of my knowledge, information, and belief on this 8th day of October, 2019, and I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct (please see Carney v. United States Dep't of Justice, 19 F.3d 807, 812 n. 1 (2d Cir. 1993)):

1. My name is Martin S. Gottesfeld and I am the sole plaintiff in the case of Gottesfeld v. Hurwitz, et al., 18-cv-10836-PGG-GWG, pending before The Honorable U.S. District Court for The Southern District of New York (herein "the case").

2. Mail between me and the court in both directions regarding the case has and will likely continue to encounter delays of two (2) or more weeks, such that it more likely than not it will take two (2) weeks for me to first receive the defendants' reply to my opposition to the defendants' motion to dismiss (D.E. 51), and then a subsequent and additional two (2) weeks or longer for any specific motion that I might like to file for leave to file a sur-reply to reach the court.

3. I cannot now file for leave to file a sur-reply because I do not know for sure that the defendants in the case will file a reply, and if so, I do not and cannot now know the specific basis or bases on which I might in the future wish to move to file a sur-reply (please see United States ex rel. Poonam Rai, D.D.S. v. KS2 TX, P.C., 2019 U.S. Dist. LEXIS 53147, Civil No. 3:17-cv-834 (JBA) (D. Conn. March 27, 2019) at 32-33, denying a motion for leave to file a sur-reply for lack of specificity).

4. I am therefore moving for the court to grant me a sufficient period of time between the filing of the defendants' reply to my opposition to the defendants' motion to dismiss (D.E. 51) and any dispositive ruling, so that I can file an informed and specific motion for leave to file a sur-reply.

5. I note, by way of demonstration and not limitation, that I mailed D.E. 59 on June 10th, 2019, some ten (10) days before a June 20th, 2019, filing deadline, but that it was not entered on the docket until July 2nd, 2019, some twenty-one (21) days or three (3) weeks later, and eleven (11) days after the June 20th, 2019, filing deadline.

6. I also note, by way of demonstration and not limitation, D.E. 74, showing that I did not receive an order of the court from the clerk's office until two weeks (2) after it had been entered, even though the court's order was marked received in the FCI Terre Haute mail room one (1) week earlier.

7. I further wish to note that I have unsuccessfully taken every action of which I could think in order to reduce or eliminate these delays, specifically including moving the court for an order requiring the defendants and their parties in privity to more expediently marshal mail between me and the defendants and between me and the court, inquiring with the U.S. Postal Service Inspector General, and filing administrative-remedy requests with the Federal Bureau of Prisons.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on Tuesday, October 8th, 2019.



Martin S. Gottesfeld